Nos. 186, 187

In the Supreme Court of the United States

OCTOBER TERM, 1951

SAM K. CARSON, COMMISSIONER OF FINANCE AND TAXATION, PETITIONER

v.

ROANE-ANDERSON COMPANY, ET AL.

SAM K. CARSON, COMMISSIONER OF FINANCE AND TAXATION, PETITIONER

v.

CARBIDE AND CARBON CHEMICAL CORPORATION, ETC., DIAMOND COAL MINING COMPANY, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

MEMORANDUM FOR THE RESPONDENTS AND FOR THE UNITED STATES, INTERVENOR

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The question presented in these cases is essentially that of the construction to be given to Section 9 (b) of the Atomic Energy Act of 1946, c. 724,

60 Stat. 755 (42 U.S.C. 1946 ed., Sec. 1809) which in pertinent part provides:

> The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any State, county, municipality, or by any subdivision thereof.

Specifically the question presented is whether the purchase and use of materials and supplies by cost-type contractors of the Atomic Energy Commission in the performance of their contracts are part of the "activities * * * of the Commission" within the intendment of Section 9 (b) and therefore exempt from taxation by any state, county or subdivision thereof "in any manner or form."

The Court below, after first concluding upon the authority of *Alabama* v. *King & Boozer*, 314 U. S. 1, that the contractors were independent contractors (No. 186, R. 16-17), construed Section 9 (b) as exempting the purchases and uses of materials by those contractors from Tennessee sales and use taxes.

In reaching that conclusion the court below, rejecting petitioner's contention that Section 9 (b) was to be narrowly construed (No. 186, R. 19-24), adopted a broad construction of the provision and placed its decisions upon that construction (No. 186, R. 23-24).

The broad interpretation of Section 9 (b) by the Tennessee court is in accord with the principles laid down by this Court in cases involving similar exemption provisions of prior federal statutes. *Pittman v. Home Owners' Loan Corp.*, 308 U. S. 357; *Reconstruction Finance Corp.* v. *Beaver County*, 328 U. S. 204; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95; *Maricopa County* v. *Valley Bank*, 318 U. S. 357.

Undoubtedly, the question presented by the petitions for writs of certiorari is one of very substantial monetary and legal importance both to the states and to the Atomic Energy Commission. The question of the interpretation to be given to Section 9 (b) has arisen not only in Tennessee but in Washington, New Mexico, Illinois, California, Indiana, Georgia, South Carolina, and Kentucky as well. Moreover, the question is a potential one in any state in which the Atomic Energy Commission is now, or in the future may be, engaged in the conduct of its affairs.

However, the decisions below, the first to consider the question, would seem to be correct and hence there is no impelling reason for review at this time. If the basic question here involved is to be decided by this Court, it would appear to be more desirable that the question be presented more broadly than it is in these cases, involving only sales and use taxes. In this connection, it is to be noted that the Superior Court of Thurston

County, Washington, held, on September 20, 1951, in the case of *General Electric Co.* v. *State of Washington*, that Section 9 (b) precluded the application of Washington business and occupation taxes to the reimbursements made to a cost-type contractor with the Atomic Energy Commission for its expenditures for both labor and materials. The Department of Justice has been advised by the State of Washington that this decision will be immediately appealed by the State to the Supreme Court of Washington, and that it is hoped that the case can be brought to this Court, if necessary, during this term.

It is respectfully submitted (a) that consideration of the petitions should be delayed until the Supreme Court of Washington has passed upon the similar questions pending before it, with leave to the parties and the intervenor to file further memoranda in light of the Washington decision, or (b) if the Court is not disposed to do this, that the petitions for writs of certiorari should be denied.

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